

## **REMARKS**

In the Office Action dated November 1, 2007, claims 8-10 were rejected under 35 U.S.C. § 101 because “the claims fail to place the invention squarely within one statutory class of invention.” In addition, claims 1, 2, and 4 were rejected under 35 U.S.C. § 102(e), as anticipated by U.S. Patent Publication No. 2003/0061541 to Kaler et al. (“Kaler”); claims 3, 5-8, 11, and 14-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaler as applied to claim 1, and further in view of U.S. Patent No. 6,826,697 to Moran (“Moran”); claims 9 and 12 were rejected under U.S.C. § 103(a) as being unpatentable over Kaler as applied to claims 8 and 11, and further in view of Moran and U.S. Patent Publication No. 20020099806 to Balsamo et al. (“Balsamo”); and claims 10, 13, 19, and 20 were rejected under U.S.C. § 103(a) as being unpatentable over Kaler as applied to claims 8, 11 and 18, and further in view of Moran and U.S. Patent No. 6,965,634 to Clark (“Clark”). Applicants respectfully traverse the rejections for the reasons set forth hereinbelow.

### **A. Claims 8-10 Recite Statutory Subject Matter**

In rejecting claims 8-10 under 35 U.S.C. § 101, the Examiner asserted that “the language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practice (sic, practical) application producing a concrete, useful, and tangible result.” *See, Office Action*, p. 2 (November 1, 2007). In support of this rejection, the Examiner referred to Applicants’ description at paragraph 23 of the application as showing that a “medium” includes “signals,” and concludes therefrom that “the claims fail to place the invention squarely within one statutory class of invention. In response to the Examiner’s rejection of claims 8-10 under 35 U.S.C. § 101 as not falling within a statutory class, Applicants respectfully submit that the claim clearly fits within either the “machine” or “manufacture” categories recited in 35 U.S.C. § 101. Indeed, the preamble of claim 8 explicitly recites “an article of manufacture.” While the Examiner takes issue with claims being “drawn to a form of energy,” Applicants would respectfully point out that claims 8-10 are directed to an “article of manufacture having at least one recordable medium having stored thereon executable instructions and data” which are executed by a processing device, and it is neither a fair nor reasonable characterization of these claims to say that they are “drawn to a form of energy.” Persons skilled in the art would understand the referenced claim language to refer to patentable subject matter, especially where other issued patents include the

exact same language. *See*, U.S. Patent No. 7,181,702 (claim 47) and U.S. Patent No. 7,084,758 (claim 12). Accordingly, Applicants request that the Examiner reconsider and remove the statutory subject matter rejection of claims 8-10. *See*, State Street Bank & Trust Co. v. Signature Financial Group Inc., 149 F.3d. 1368, 1373 (Fed. Cir. 1998) (holding that “the transformation of data ... by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces ‘a useful, concrete and tangible result’ ....”).

**B. Claims 1, 2, and 4 Are Not Anticipated by Kaler**

In response to the Examiner’s rejection of claims 1, 2 and 4 under 35 U.S.C. § 102 as being anticipated by Kaler, Applicants respectfully submit that the claims are distinctly different from the Kaler’s disclosure of a method and apparatus for analyzing the performance of a software application executing on a distributed data processing system. Based on Applicants’ review, the anticipation rejection is based on conclusory assertions about the Kaler reference that are simply not supported. Indeed, Applicants have closely reviewed the passages from Kaler (page 1 (paragraph 0001) and page 18 (paragraph 0283)) which the Examiner cites to show claim 1’s requirement of “retrieving a subset of log file entries from the memory,” but Applicants are simply not able to identify any such corresponding disclosure in Kaler. Rather than disclosing the present invention’s scheme for “retrieving a subset of log file entries” from memory, Kaler discloses instead that the “VSA maintains a log of all of the events that have been collected.” *See*, Kaler , paragraph 283. With the cited disclosure, Kaler expressly teaches away from retrieving a subset of log file entries.

Nor does Kaler disclose the requirement of “processing each entry in the memory to identify entries in the subset of log file entries that belong to a complete client session” from the expanded data set. On this point, the Examiner’s cited passage from Kaler (page 9 (paragraph 0139) and page 16 (paragraphs 0251-0252)) is entirely silent identifying entries in the subset of log file entries that belong to a complete client session. Rather than processing memory entries to identify entries in the subset that belong to a complete client session, Kaler discloses that a local event concentrator (LEC) has a limited size storage buffer so that any event that is received that is over the buffer size will cause the first or oldest entry in the buffer to be written over. *See*, Kaler, paragraph 203 (“While waiting for a trigger condition to occur, events are retained transiently by the LEC 192 in a circular buffer whose size can be specified by VSA 100. For

example, VSA 100 can specify that the buffer store 500 events, so when the 501st event comes in, the first event is written over.”). Thus, the cited Kaler disclosure in no way suggests processing the each entry in the memory by identifying entries in the subset of log file entries that belong to a complete client session.

Finally, Kaler fails to disclose the requirements of claims 2 and 4 of “processing each entry in the memory to identify entries in the subset of log file entries that belong to a complete client session” since the cited Kaler disclosure (paragraphs 251-252) is nothing more than a list of APIs for registering an entity before it fires events and after it completes firing events. While the referenced BeginSession and EndSession APIs might be used to generate log file entries, there is no suggestion that these API’s would be used to process each log file entry in memory to identify entries in the subset of log file entries that belong to a complete client session, much less the requirement in claim 2 of identifying a complete client session by identifying all entries in the subset that are associated with a particular client session and that include both a beginning entry and an end entry, nor the requirement in claim 4 of identifying an end entry for a client session as any entry associated with that client session that has no other entries for that client session that occur within a session expiration window.

Because any one of the foregoing deficiencies is sufficient to overcome the anticipation rejection, Applicants need not elaborate on other claim requirements that are also missing from Kaler’s disclosure. At best, Kaler discloses a system for storing some (but not all) buffered events at an LEC which may be transmitted to a VSA, which maintains a log of all collected events. Because Kaler does not disclose “retrieving a subset of log file entries” and then processing each entry in memory to identify the subset entries that belong to a complete client session, Kaler cannot be used as an anticipatory reference against the claims. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”). Accordingly, Applicants respectfully request that the anticipation rejection of claims 1, 2, and 4 be withdrawn and that the claims be allowed.

**C. Claims 3 and 5-20 Are Patentable Over the Cited Combinations of Kaler, Moran, Balsamo and Clark**

In response to the Examiner’s rejections of claims 3 and 5-20 under 35 U.S.C. § 103 as unpatentable over various combinations of Kaler, Moran, Balsamo and Clark, Applicants

respectfully request reconsideration and withdrawal of the rejections because none of the references, taken singly or in combination, discloses processing the log file of entries in memory by identifying the entries in a subset of log file entries that belong to a complete client session. In particular, Kaler's failure to disclose claim 1's requirement of "retrieving a subset of log file entries from the memory" and then "processing each entry in the memory to identify entries in the subset of log file entries that belong to a complete client session" (as discussed above) is not remedied by the disclosure of Moran since neither reference discloses the present invention's sequence for grouping log file entries by session by identifying the log file entries "in a subset of log file entries" that belong to a complete client session. Thus, putting aside for the moment the question of whether the Kaler and Moran references would be combined by one of ordinary skill in the art, the combination still does not meet the claim requirements of "retrieving a subset of log file entries from the memory" and then "processing each entry in the memory to identify entries in the subset of log file entries that belong to a complete client session." See, MPEP, § 2143.03 ("To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).").

The rejection analysis of claims 8-10 is likewise deficient in that Kaler fails to disclose independent claim 8's requirement of reading "a plurality of records from a file system into a ring buffer, where said plurality or records comprises a subset of all records in the file system" and then scanning "each record in the ring buffer to identify a user session for said record and to identify any start or end records in the ring buffer." While the rejection analysis refers to Kaler's disclosure of a circular buffer in the LEC that is controlled by the VSA, Kaler actually discloses that the LEC has a limited size storage buffer so that any event that is received that is over the buffer size will cause the first or oldest entry in the buffer to be written over, and discloses further that the "VSA maintains a log of all of the events that have been collected." See, Kaler, paragraphs 203, 283. Thus, Kaler is entirely silent about reading a "subset of all records" into a ring buffer and then scanning each record in the ring buffer to identify "start or end records in the ring buffer" that belong to a complete user session. This deficiency is not remedied by the disclosure of Moran since neither reference discloses the present invention's sequence for processing a subset of records in a ring buffer to identify records in the subset that belong to a

complete user session. Thus, putting aside for the moment the question of whether the Kaler and Moran references would be combined by one of ordinary skill in the art, the combination still does not meet the claim requirements of reading “a plurality of records from a file system into a ring buffer, where said plurality or records comprises a subset of all records in the file system” and then scanning “each record in the ring buffer to identify a user session for said record and to identify any start or end records in the ring buffer.” *See*, MPEP, § 2143.03.

The rejection analysis of claims 11-17 is also deficient in that Kaler fails to disclose independent claim 11’s requirement of “a processing engine to process a subset of the plurality of server request entries to group the server request entries by session using the session identifier in each server request entry.” Indeed, the rejection analysis admits that Kaler fails to disclose the requirements of either the “log file collection system...” element or the “processing engine” element. *See*, Office Action, p. 14. These deficiencies are not remedied by the cited disclosure of Moran since the Examiner has not cited any disclosure in Moran for the requirement of a processing engine which processes a subset of the plurality of server request entries, thereby grouping the server request entries by session using the session identifier in each server request entry. *See*, Office Action, p. 15. Thus, putting aside for the moment the question of whether the Kaler and Moran references would be combined by one of ordinary skill in the art, the combination still does not meet the claim requirement of a “a processing engine to process a subset of the plurality of server request entries to group the server request entries by session using the session identifier in each server request entry.” *See*, MPEP, § 2143.03.

Finally, the rejection analysis of claims 18-20 is deficient in that Kaler fails to disclose independent claim 18’s requirement of a “means for reading a subset of the network session data” and then a “means for processing the subset of the network session data to group said network session data by session.” While the rejection analysis refers to Kaler’s disclosure of a set of APIs (including the BeginSession and EndSession APIs) that enable the operating system to read any one or more of several fields in the application, Kaler is entirely silent about reading a “subset of the network session data” and then “processing the subset of the network session data to group said network session data by session.” This deficiency is not remedied by the disclosure of Moran since neither reference discloses the present invention’s system for parsing web site logs one session at a time by reading and processing the “subset of the network session data” to group said network session data by session. Thus, putting aside for the moment the

question of whether the Kaler and Moran references would be combined by one of ordinary skill in the art, the combination still does not meet the claim requirements. See, MPEP, § 2143.03.

As seen from the foregoing (and putting aside for the moment the propriety of combining the Kaler, Moran, Balsamo, and Clark references), a *prima facie* case of obviousness has not been established because none of the references disclose or suggest of reading or retrieving “a subset” of log file entries and then processing each entry in the memory to identify entries in the subset of log file entries that belong to a complete client or user session, as variously recited in the claims. Accordingly, independent claims 1, 8, 11, and 18 are allowable. To the extent that dependent claims 1-7, 9-10, 12-17, and 19-20 each respectively incorporate the requirements of independent claims 1, 8, 11, and 18, these dependent claims are likewise allowable, even though there are additional differences recited in the dependent claims. For at least the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the rejection of the claims because the Examiner has not established a *prima facie* case of obviousness. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Because the Examiner has not made a *prima facie* case that the Kaler/Moran/Balsamo/Clark combination meets or suggests the requirements of the claims, Applicant respectfully requests that the obviousness rejection of claims 3 and 5-20 be withdrawn and that the claims be allowed.

### **CONCLUSION**

In view of the amendments and remarks set forth herein, Applicants respectfully submit that all pending claims are in condition for allowance. Accordingly, Applicants request that the rejections of claims 1-20 be withdrawn and that a Notice of Allowance be issued. If there are any remaining issues that might be resolved through a telephonic interview, Applicant’s undersigned representative would welcome an opportunity to discuss such issues with the Examiner.

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